



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-178627

September 14, 1973

Law Offices
Marshall E. Miller
Jefferson Building
1225 Nineteenth Street, NW.
Washington, D. C. 20036

Attention: Marshall E. Miller, Esquire

Gentlemen:

We refer to your letter dated May 21, 1973, on behalf of Pierce Associates, Incorporated, protesting against the award of a contract to W. H. Schlosser Company, Incorporated, under invitation for bids (IFB) No. 14576, issued by the Government Printing Office (GPO). We have been advised that the GPO, on the basis of urgency, made the award to Schlosser on May 11, 1973.

The IFB was issued on March 21, 1973, for the first phase of the improvement and renovation of the air conditioning systems and related services of the main Government Printing Office facility. On April 23, 1973, the bid opening date, 9 timely bids were received by the GPO. The low bid was from Schlosser in the amount of \$3,246,000, and the next low bid in the amount of \$3,250,000, was submitted by Pierce.

Section 0110 (Special Conditions), of the IFB contained a listing of Subcontractors provision, which stated in pertinent part the following:

"LISTING OF SUBCONTRACTORS

"9.1 For each category on the List of Subcontractors which is included as part of the bid form, the bidder shall submit the name and address of the individual or firm with whom he proposes to contract for performance of such category, Provided, that the bidder may enter his own name for any category which he will perform with personnel carried on his own payroll (other than operators of leased equipment) to indicate that the category will not be performed by subcontract.

[Protest of GPO Contract Award]

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"9.2 If the bidder intends to subcontract with more than one subcontractor for a category or to perform a portion of a category with his own personnel and subcontract with one or more subcontractors for the balance of the category, the bidder shall list all such individuals or firms (including himself) and state the portion (by percentage or narrative description) of the category to be furnished by each.

* * * * *

"9.4 Except as otherwise provided herein, the successful bidder agrees that he will not have any of the listed categories involved in the performance of this contract performed by any individual or firm other than those named for the performance of such categories.

"9.5 The term 'subcontractor' for the purpose of this requirement shall mean the individual or firm with whom the bidder proposes to enter into a subcontract for manufacturing, fabricating, installing or otherwise performing work under this contract pursuant to the project specifications applicable to any category included on the list.

* * * * *

"9.13 If the bidder fails to comply with the requirements of subparagraphs 9.1 or 9.2 of this clause, the bid will be rejected as nonresponsive to the invitation."

You contend that award to Schlosser was contrary to the requirements of the "Listing of Subcontractors" provision. Specifically, you point out that in sections 1501 ("Mechanical and Electrical Equipment General Requirements") and 1560 ("Sheet Metal and Air Handling Systems") of the List of Subcontractors form, Schlosser listed itself and a subcontractor but did not state the portion of the work to be performed by each as required by section 9.2 of the Listing of Subcontractors provision cited above. Therefore, it is your position that the low bid should have been rejected as non-responsive to a clear requirement of the invitation.

It is GPO's position that although Schlosser failed to specifically denote the portion of work to be performed by it and the listed subcontractors in the two categories in question, such information was nevertheless determinable from the form as completed. In this connection, it is pointed out that since Schlosser is a well-known mechanical contractor it was concluded that it would assume responsibility for performing the mechanical portion of the work called for by sections 1501 and 1520, whereas Union Light and Power, an electrical contractor, would perform the electrical work called for by section 1501, and United Roofing and Sheetmetal would perform the sheetmetal work required by section 1520. Furthermore, GPO notes that by listing the subcontractors in the respective categories, Schlosser is precluded from "bid chopping" among subcontractors and the purpose to be served by the listing requirement is accomplished.

GPO correctly points out that the subcontractor listing requirement is intended to preclude post-award "bid chopping" and its attendant undesirable effects and to require of bidders that they agree not to have any of the listed categories of work performed by firms other than those listed in the form, and is therefore a material requirement pertaining to bid responsiveness. 43 Comp. Gen. 206 (1953). However, we have held that minor deficiencies in regard to subcontractor listing requirements may be waived in appropriate circumstances. We have reviewed the deficiency in Schlosser's listing of subcontractors and agree with the administrative conclusion that the information on the form, reasonably construed, indicates that Schlosser agreed to perform the mechanical works portions of the two questioned categories and the electrical and sheetmetal work called for is to be performed by the respective subcontractors. Therefore, we consider the circumstances appropriate for waiver of the defect as a minor informality. 50 Comp. Gen. 295, 300 (1970); B-173991(1), March 20, 1972.

You also contend that the listing by Schlosser of the firm of Potts and Callahan, incorporated, as subcontractor for the earthwork was in violation of the basic purpose of the subcontractor listing requirement. You state that Potts and Callahan announced prior to bid opening that it was withdrawing its proposal. Therefore, you conclude that Schlosser's utilization of Potts and Callahan for the earthwork could only have resulted from post-bid negotiations.

We have examined the record on this point, and we find nothing in the record to support this allegation. Further, the GPO has reported that it is not aware of any basis for this contention. Furthermore, by the terms of section 9.4 of the Listing of Subcontractors clause Schlosser is required to have Potts and Callahan perform all of the earthwork under the contract.

Finally, you note that Schlosser has listed itself as the contractor for the concrete work. You contend that Schlosser was not a signatory with the appropriate union trades in this area, nor does it have the necessary shop fabrication facilities to perform such work itself. You conclude "in these circumstances, his utilization of his own firm to perform this work, on this project, could result only from post-bid actions on his part, in circumvention of the legitimate steel fabricators who bid on this project and thus again in clear violation of the basic purpose of the subcontract listing requirement."

Concerning the obligation of Schlosser to perform the concrete work, the GPO states that it has no reason to believe that Schlosser will not meet its commitment under the contract as Schlosser is considered to be a responsible firm with a satisfactory performance record.

Whether Schlosser is capable of meeting its commitment in this regard is a matter of responsibility rather than responsiveness. We have held that determinations concerning the qualifications of a prospective contractor are the primary responsibility of the administrative officers concerned. 45 Comp. Gen. 4 (1965). In the absence of a showing of bad faith or lack of any reasonable basis for such determination, we would not be justified in objecting to an administrative determination in this regard. 45 Comp. Gen. 4, supra. Since there has been no such showing in this case, there is no basis for our Office to question the determination.

On the record before us, we find no basis for disturbing the award made and your protest is therefore denied.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General
of the United States